

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

TRUCK-RAIL HANDLING INC., and
QUALITY TRANSPORT, INC.

Plaintiffs,

v.

BURLINGTON NORTHERN SANTA FE
RAILROAD COMPANY,

Defendant.

No. C 02-02825 JSW

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT ON
PLAINTIFF'S CONSPIRACY
CLAIM**

INTRODUCTION

On March 8, 2005, the Court granted Defendant Burlington Northern Santa Fe Railroad Company's ("BNSF") motion for summary judgment, and granted in part and denied in part the cross motion for summary judgment filed by Plaintiffs Truck Rail Handling ("TRH") and Quality Transport Inc. ("QTI") (collectively "Plaintiffs").

In its order of March 8 (the "March 8 Order"), the Court ordered further briefing from the parties on the conspiracy to monopolize claim because BNSF had not moved on that claim believing that Plaintiffs did not intend to pursue it. (*See* March 8 Order at 24.)

The parties have now submitted the briefing ordered by the Court, and the matter is ripe for disposition. Having considered the parties' pleadings, evidence submitted in support thereof, and relevant legal authority, the Court finds the matter suitable for disposition without oral argument. *See* N.D. Civ. L.R. 7-1(b). For the reasons set forth in the remainder of this Order, the Court GRANTS Defendant's motion for summary judgment on the conspiracy claim.

ANALYSIS

1 The Court has previously recited the relevant facts, procedural history and standards
2 applicable to motions for summary judgment in its March 8 Order and shall not repeat them here.
3 Plaintiffs allege that BNSF engaged in a “conspiracy to monopolize ... the dray and liquid material
4 loading and unloading market,” *i.e.* the market for transloading of bulk commodities, in violation of
5 Section 2 of the Sherman Act. (FAC ¶ 68; March 8 Order at 9-10.)¹ In order to prevail on a
6 conspiracy to monopolize claim, Plaintiffs must establish the existence of a combination or conspiracy
7 to monopolize, the specific intent to monopolize, and anti-competitive acts designed to effect that
8 intent. *See Paladin Associates, Inc. v. Montana Power Co.*, 328 F.3d 1145, 1158 (9th Cir. 2003);
9 *Freeman v. San Diego Ass’n of Realtors*, 322 F.3d 1133, 1154 (9th Cir. 2003). As with any
10 antitrust claim, Plaintiffs also must establish antitrust injury. *See Paladin*, 328 F.3d at 1158.

11 Plaintiffs have consistently alleged that the anti-competitive acts in question are BNSF’s tying
12 leases for its facilities to the execution of a Transload Service Drayage Agreement (the “TSA”), and
13 that BNSF used the TSA to illegally fix prices. Thus, as with their other claims, Plaintiffs’ conspiracy
14 claims rest on BNSF’s use of the TSA. The Court already has concluded that the TSA has not been
15 used to effect an illegal tying arrangement. (*Id.* at 18-19.)

16 Similarly, in its March 8 Order, the Court considered Plaintiffs’ alleged price fixing claim from
17 both a horizontal and vertical perspective and found that to the extent Plaintiffs’ claims of price fixing
18 were allegations of vertical price fixing, their claims failed because of their failure to prove the relevant
19 market. (March 8 Order at 20 n. 14.) The Court concluded that a claim for horizontal price fixing
20 failed because Plaintiffs had not presented sufficient evidence to show that BNSF actually set the
21 prices of transloading services in the TSA or impinged upon *any* transloader’s freedom to set their
22 own prices. (*Id.* at 20.) This latter finding is equally applicable to Plaintiffs’ claims of vertical price
23 fixing.

24 Accordingly, Plaintiffs cannot establish that BNSF engaged in anti-competitive acts designed
25 to effectuate the alleged intent to monopolize. BNSF is entitled to judgment on the conspiracy to
26 monopolize claim as well.

27
28 ¹ In the March 8 Order the Court concluded that Plaintiffs had not met their burden to establish
this market as a relevant market for antitrust purposes.

IT IS SO ORDERED.

Dated: July 11, 2005

/s/ Jeffrey S. White

JEFFREY S. WHITE

UNITED STATES DISTRICT JUDGE